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Examiner: Dwayne K. Handy

Art Unit: 1743

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Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
1001 Dulany Street,
Alexandria, VA 22314

Sir:

In accordance with the duty of disclosure under 37 C.F.R. §§1.56, 1.97 and 1.98,

Applicants hereby call the following documents to the Examiner's attention:

United States Patent No. 5,874,219 to Rava et al., issued on February 23, 1999;

United States Patent No. 6,720,149 to Rava et al., issued on April 13, 2004;

United States Patent No. 6,322,971 to Chetverin et al., issued on November 27, 2001;

United States Patent No. 6,270,961 to Drmanac, issued on August 7, 2001;

United States Patent No. 6,103,463 to Chetverin et al., issued on August 15, 2000;

International Publication No. WO 93/17126 to Chetverin et al., published on September 2, 1993;

International Publication No. WO 95/09248 to Drmanac, published on April 6, 1995;

European Patent 0675966 to Chetverin et al., issued on October 6, 2004;

Maskos et al., *Nucleic Acids Research* 21 (9):2267-2268 (1993); and

Maskos, "A Novel method of nucleic acids sequence analysis," *Thesis submitted for the degree of Doctor of Philosophy at the University of Oxford*, Hylary Term 1991.

In accordance with 37 C.F.R. §1.98 (a)(2)(i)(ii), copies of the U.S. patents are not enclosed herewith. However, if copies are needed, the Examiner is respectfully requested to contact the undersigned. Copies of the foreign documents and literature documents are enclosed herewith.

Applicants would also like to bring to the Examiner's attention information from Civil Action No. 04-901-JJF in the U.S. District Court for the District of Delaware. The action is stylized as *Affymetrix v. Illumina* in which the present assignee sued the defendant based on six patents owned by the assignee. Two of the six patents are U.S. Patent Nos. 6,399,365 ("the '365 patent") and 5,545,531 ("the '531 patent"). The '365 patent is a parent to the present application. The defendant in that litigation has cited U.S. Patent No. 5,945,334 (a parent of the present application containing the same disclosure) against the '531 patent as well as several Chetverin documents and Maskos's dissertation listed above. Additionally, in this action, the defendant has broadly made claims of non-infringement, invalidity based on prior art under 35 U.S.C. §§ 102 and 103, invalidity based on lack of enablement and written description under 35 U.S.C. § 112,

and inequitable conduct. Upon request, Applicants can provide copies of litigation documents that may be of interest to the Examiner.

Applicants respectfully request that the Examiner consider the above material and cite the same. Each of the above-noted documents is listed on the attached Form PTO-1449. The Examiner is respectfully requested to initial the Form PTO-1449, and to return the initialed copy with the next communication from the U.S. Patent and Trademark Office.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee necessary for consideration of this Supplemental Information Disclosure Statement to Affymetrix, Inc.'s Deposit Account No. 01-0431 or, alternatively, to Greenblum & Bernstein's Deposit Account No. 19-0089.

If the Examiner has any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
AFFYMETRIX, INC.

Date: 1/30/06

By: Oliver R. Ash Jr. Reg No
Philip McGarrigle 40491
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Affymetrix, Inc.
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3380 Central Expressway
Santa Clara, CA 95051
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Substitute for form 1449A/PTO

(use as many sheets as necessary)

Sheet

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2

Application Number

Complete if Known

10/789,678

Filing Date

February 27, 2004

First Named Inventor

Besemer et al.

Group Art Unit

1743

Examiner Name

Dwayne K. Handy

Attorney Docket Number

1067.1H

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FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. ¹	Foreign Patent Document	Issue Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁶
		Country Code ³ - Number ⁴ - Kind Code ⁵ (if known)				
	6.	WO 93/17126	09/02/1993	Chetverin et al.		
	7.	WO 95/09248	04/06/1995	Drmanac		
	8.	EP 0675966	10/06/2004	Chetverin et al.		

Examiner Signature		Date Considered	
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¹ Applicant's unique citation designation number (optional). ² See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

Burden Hour Statement: This form is estimated to take 2.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

Substitute for form 1449A/PTO

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(use as many sheets as necessary)

Sheet

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of

2

Complete if Known

Application Number

10/789,678

Filing Date

February 27, 2004 JAN 30 2006

First Named Inventor

Besemer et al.

Group Art Unit

1743

Examiner Name

Dwayne K. Handy

Attorney Docket Number

1067.1H

OTHER PRIOR ART -- NON PATENT LITERATURE DOCUMENTS

Examiner Initials *	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
	9.	Maskos et al., "A novel method for the analysis of multiple sequence variants by hybridisation to oligonucleotides," <i>Nucleic Acids Research</i> 21(9):2267-2268 (1993)	
	10.	Maskos, "A novel method of nucleic acids sequence analysis," <i>Thesis submitted for the degree of Doctor of Philosophy at the University of Oxford</i> , Hylary Term 1991.	

Examiner
Signature

Date

Considered

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Unique citation designation number (optional). ² Applicant is to place a check mark here if English language Translation is attached.

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